

## YOUR RIGHTS IF ARRESTED

### **What These Words Mean**

*Bond* – A promise to appear in court, which often includes a guarantee of money, and which is required for a person who has been arrested to get out of jail while waiting for a trial (sometimes called bail or a bail bond).

*Charge* – The formal statement that details what the arrested person is accused of doing. A charge may be brought: by an information, which is a sworn statement filed in court by a prosecutor; or by an indictment, which is filed by a grand jury.

*Defendant* – The person who is accused of committing a crime.

*Evidence* – Anything that can be used in court to show what is true and what is not.

*Information and Indictment* – The two types of documents that may be used to state the charge or charges against the defendant.

*Guilty* – Found, by either a judge or jury, to have committed the crime charged.

*Grand Jury* – Twelve citizens chosen from the community who hear evidence presented by the prosecutor and then decide whether the person arrested should be held for a trial. Grand jury meetings are held in private and are not open to the public or to a potential defendant.

*(Petit) Jury* – Twelve citizens chosen from the community who are asked questions to determine if they can be fair, who hear the evidence in a trial and decide what is true and whether the defendant is guilty or not guilty.

*Not Guilty* – The verdict required if the prosecution does not prove guilt beyond a reasonable doubt.

*Preliminary Hearing* – A court proceeding where a judge hears evidence to decide if the person arrested should be held for trial. This is an alternative to a grand jury.

*Probation* – An alternative to time in prison or jail. Conditions can be set by the judge, and may be supervised by a probation officer. Violation of conditions may result in revocation of probation and imposition of time in prison or jail.

*Prosecutor* – The lawyer for the government, either state or federal.

*Sentence* – The length of time in prison, in jail or on probation that is ordered by the judge. In some cases, the sentence is set by the jury. For some crimes, the sentence can be a fine instead of time in jail.

*Voir Dire* – The process of questioning potential jurors to determine if they can be fair.

*Waive* – To voluntarily give up a right.

## **Types of Offenses**

*Offense* – A violation of law. In Missouri, offenses can be either crimes (felonies or misdemeanors) or infractions.

*Ordinance* – A local law of a city, town or county. Technically, ordinance violations are not really crimes or infractions. Examples of ordinance violations would be a traffic ticket, a peace disturbance, or a petty theft. Punishment is usually by a fine. (Note: Some traffic tickets and other minor offenses can be charged either as an ordinance violation or a misdemeanor.)

*Infraction* – A violation of state laws punishable only by a fine, not by imprisonment.

*Misdemeanor* – A violation of state laws, punishable by a sentence of up to one year, to be served in the county jail or workhouse, or by a fine, or both. Trespassing and possession of under 35 grams of marijuana are examples of misdemeanors.

*Felony* – A more serious offense, punishable by a sentence to be served in the Missouri Department of Corrections. Murder, robbery, and burglary are felony offenses. Possession of heroin, cocaine, or more than 35 grams of marijuana are also felonies. Some felonies may also be punished by a fine.

*Federal Offense*—A violation of laws passed by the United States Congress. These cases are heard in the United States district courts, and prosecuted by the U.S. Attorney. Sentences are served in the Federal Bureau of Prisons.

## **When Can You Be Arrested?**

- If a police officer has a warrant for your arrest.
- If a police officer believes that you have violated the law.
- If a police officer sees you violate, or try to violate, the law.

## **What Can The Police Do To You If You Are Arrested?**

- Search your body and clothing.
- Search your belongings.
- Search your car if you are in it when the police stop you.
- Fingerprint you.
- Put you in a lineup.

You have the right to refuse any of the following requests unless the police have a court order:

- Answer questions.
- Ask you to sign or write out or record a statement.
- Ask you to provide a sample of your handwriting.
- Ask you to consent to having a sample taken of your breath, blood, semen or hair.
- Ask you to consent to a search of your home or other property you own.

## **When Do The Police Need a Search Warrant?**

If you do not agree to allow the police to search your home, or some other property you own or control, the police can apply to a judge for a search warrant, which is a court order that allows the police to carry out the search without your consent. The police can also apply for an order to require you to provide a sample of your handwriting, breath, blood, semen or hair.

## **Can The Police Test You For Alcohol or Drugs?**

The police can apply for an order to require you to submit to testing for alcohol or drugs under certain circumstances.

If you have been driving a motor vehicle, a police officer may ask you to perform simple tests, such as trying to walk a straight line heel-to-toe,

to decide if you are under the influence of drugs or alcohol. If you are arrested for driving under the influence of drugs or alcohol, Missouri laws allow the police to ask you to consent to chemical tests for alcohol or drugs, and the results of the tests can be used against you in court. You have the right to refuse to submit to the tests, but the fact that you refused may also be used against you in court. In addition, your driver's license may be revoked or suspended if you refuse to submit to the tests.

## **What Are Your Rights After Arrest?**

- You may refuse to talk to the police or answer any questions.
- You may ask for a lawyer at any time – even after you have answered some questions.
- You may stop the questioning at any time just by saying that you do not want to answer any more questions.
- You may refuse to sign or write out or record a statement. You must be allowed to call a lawyer. If you cannot pay for a lawyer, you may insist that a lawyer be provided for you before you answer any questions.
- Before you are asked any questions, the police must advise you of your “Miranda” rights.
- You may refuse to consent to any search or seizure of your person, property, home or vehicle, or to provide samples requested by the police.

## **What Are Your “Miranda” Rights?**

The name “Miranda” comes from a case decided by the United States Supreme Court. The Court's decision requires the police to advise you of certain rights before they ask you any questions. This is sometimes referred to as the “Miranda warning” and will go something like this: “You have the right to remain silent. Anything you say may be used against you in a court of law. You have the right to talk to an attorney and to have an attorney present during any questioning. If you cannot afford an attorney, one will be appointed for you.”

## **What Does “Waive Your Rights” Mean?**

To voluntarily choose to give them up. For example, you may decide not to talk with a lawyer before answering questions. You may decide to answer questions and talk with the police. You may decide to write out or record a statement. You may decide to allow the police to search your home. You may decide to submit to certain tests. Any of these decisions waive your rights. You are never required to waive your rights. If you

choose not to waive your rights, the fact that you did so cannot be used against you in court.

## **Do You Have To Stay In Jail Until Your Trial?**

No, in almost all cases bond will be set by a judge. You can be held by the police for *up to 24 hours* while waiting for the bond to be set. The judge will determine the conditions of the bond, including any amount of money that must be posted to guarantee that you will appear in court on the day required. You may be released simply upon signing a promise to appear in court, if the judge decides that is appropriate.

Your family and your friends may help by sponsoring your bond. They may have to deposit an amount of money with the court to meet the conditions set by the judge; or, they may have to prove that they own property in the amount of the bond. Posting bail means meeting the conditions set by the judge that allow you to be released from jail. However, if you fail to appear in court on the day required, your family and friends may lose the money or property that was posted.

You may decide to go to a bail bondsman to post bail for you. You or your family or friends pay the bondsman a fee, and in return the bondsman posts bail for you. The fee is kept by the bondsman after your case is over as payment for the bond service. The police will usually have a list of bail bondsmen in the area, or you can look in the yellow pages of the telephone book under Bail Bonds.

## **When Do You Go To Court?**

For minor offenses, the police may give you a summons that tells you when you have to go to court. For more serious offenses, a judge will set the dates. If you have a lawyer, your lawyer will advise you when you need to appear in court. You may have to return to court several times before your case is finished.

## **Why Do You Need A Lawyer In Court?**

A lawyer is trained in the court rules and procedures that govern how your case will be handled. In addition, a lawyer is trained to evaluate the facts and circumstances of your case, and give you the best advice as to what you should do. It is best for you to have a lawyer helping you.

The judge will give you a chance to find a lawyer. If there is a chance that you could go to jail, and you cannot afford a lawyer, you may apply for a public defender to serve as your lawyer.

## **What Will Your Lawyer Do?**

Your lawyer will first try to learn as much as possible about the facts of your case. Your lawyer will ask you about the circumstances that led to your arrest. It is in your interests to cooperate with your lawyer. What you tell your lawyer is private, and your lawyer is required to keep your conversations confidential. Your lawyer cannot reveal to the police or to the court what you say. You should try to help your lawyer all you can. Tell the lawyer all you know about your case. Your lawyer will also seek information from other sources by asking the prosecutor to hand over any police reports about the incident and by interviewing possible witnesses. You should give your lawyer the names of any witnesses and any other information that will help your lawyer investigate your case.

## **What Happens In Court?**

The judge will ask you if you plead “guilty” or “not guilty.” Your lawyer will advise you how you should answer, and what the possible results will be depending upon your answer. Almost all defendants plead “not guilty” when first asked, unless they have accepted a plea agreement.

If you plead “not guilty,” the judge will set a date for your trial.

If you plead “guilty,” the judge will decide your punishment according to your crime and the circumstances of your case. Different crimes have different possible punishments. Your lawyer will explain to you the possible punishments in your case. In some cases, the judge may decide to put you on probation rather than put you in jail or prison. If so, the judge may put certain conditions on your probation. If you violate the conditions of your probation, you may be brought back into court, and the judge may revoke your probation and put you in jail or in prison, depending upon your crime.

Sometimes your lawyer will work out a “plea agreement” with the prosecutor.

## **What is a Plea Agreement?**

Sometimes the prosecutor and your lawyer negotiate an agreement to settle your case without a trial. If you agree to plead guilty to a certain charge, then in return the prosecutor agrees to recommend a specified punishment to the judge, which can either be a specific sentence or a recommendation for probation. Your lawyer will advise you whether it is a good idea to agree to the terms of the plea agreement and plead guilty, or whether you should refuse and go ahead with the trial.

## **Does the Judge Have To Accept The Plea Agreement?**

NO! The final decision on punishment is up to the judge. However, if the judge refuses to accept the plea agreement, the judge must allow you to withdraw your plea of guilty, and you still have the right to a trial.

## **Can You Answer “Not Guilty” Even If You Are Guilty?**

Yes. You are entering a plea, not giving testimony. Under the law, you are presumed to be innocent until you are proven guilty. Furthermore, you have the right to have your case decided by a trial. You may have a trial only if you plead “not guilty.” Your lawyer will advise you about whether you should plead “guilty” or “not guilty,” but the final decision is up to you.

## **What Kind Of Trial Will You Have?**

You have the right to a jury trial, but in a misdemeanor or infraction case you must ask for it. In a felony case, you will have a jury trial unless you intentionally give up that right. The jury will hear the evidence against you, and any evidence that you bring forth, and will decide whether you are guilty or not guilty. If you do not have a jury trial, a judge will hear the evidence and decide if you are guilty or not. Your lawyer will advise you whether you should have a jury trial.

## **Is Court Any Different For A Felony Charge?**

Yes. Because felonies involve more serious crimes, more is involved.

After you are arrested, the prosecutor must present the evidence against you either to a judge in a preliminary hearing, or to a grand jury.

A preliminary hearing is held in a public courtroom, and you have the right to be present. A judge hears the evidence and decides whether you should be held for trial. The charge or charges against you will then be filed by the prosecutor in an information.

The grand jury meets in private, and you do not have the right to be present. The 12 citizens on the grand jury hear the evidence, and decide whether you should be held for trial. The charge or charges against you will then be filed by the grand jury in an indictment.

## **What Happens If You Are Found Guilty In A Trial?**

In some cases, the jury will also recommend a punishment. The final decision as to punishment is up to the judge, but cannot be greater than the punishment recommended by the jury. In cases where the jury does not

recommend punishment, the judge may sentence you to any punishment that is within the range of punishment for the particular crime as set forth in Missouri law. Most laws set a certain minimum and maximum punishment for a particular crime. As an alternative, the judge may put you on probation with certain conditions. Such conditions may include restitution to be paid to the victims of the crime and community service work. You may also be required to undergo drug and alcohol testing, and to take certain classes or training. If you are put on probation and you violate the conditions of your probation, you can be brought back into court and the judge can revoke your probation and impose a punishment according to your crime.

### **For Legal Advice, You Must Talk With A Lawyer**

The Missouri Bar offers a free Lawyer Search function, located at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org). Those seeking representation can use the tool to locate lawyers by practice area, geographic location, and spoken language.

The Missouri Bar or the Office of Chief Disciplinary Counsel cannot provide legal advice or refer you to an attorney. If you would like a referral to an attorney in the Springfield or Greene County area, call (417) 831-2783. The Office of Chief Disciplinary Counsel does not screen the attorneys who are affiliated with this lawyer referral service, and OCDC does not have information on their credentials or abilities.

Hiring a legal professional can be costly, but it is important to remember that you are paying for expertise. If you are unable to afford a lawyer, it might be possible to be represented at a lower rate or on a pro bono basis. In these situations, your quality of representation should not decrease, but your out-of-pocket costs will. The Missouri Bar does not match members of the public with pro bono lawyers, but it maintains a list of available discounted services, which is available at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org).

Additionally, some matters, such as an uncontested divorce or traffic ticket, may not call for a lawyer at all. The Missouri Bar produces numerous brochures and blog posts – all available at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org) – that address general legal questions. While they are not a substitute for a hired lawyer, they are helpful for background information on matters and can help you decide if you need to seek representation.

For more information, go to [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org) or call 573-635-4128.